

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

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In the Matter of the Petition of  
 SCHOOL DISTRICT OF BELOIT  
 to Initiate Mediation-Arbitration  
 Between Said Petitioner and  
 BELOIT EDUCATION ASSOCIATION

Case XLI  
 No. 33233 M/A-2716  
 Decision No. 21918-A

I. APPEARANCES

On Behalf of the District: Charles C. Mulcahy, Esq.  
and Robert H. Buikema, Esq.  
Mulcahy & Wherry, S.C.

On Behalf of the Association: Lysabeth N. Wilson  
UniServ Director-Rock Valley  
United Teachers

II. BACKGROUND

On January 6, 1984, the Parties exchanged their initial proposals on matters to be included in the reopened collective bargaining agreement for 1984-85. Thereafter, the Parties met on three occasions in efforts to reach an accord on a new collective bargaining agreement. On May 1, 1984, a staff mediator of the Wisconsin Employment Relations Commission conducted mediation. The District, on April 27, 1984, filed a petition requesting that the Commission initiate Mediation/Arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. On June 7, 1984, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by letters dated August 1, 1984, the Parties submitted to the Investigator their final offers, pursuant to their Stipulation regarding mediation/arbitration procedure. On August 10, 1984, the Investigator notified the Parties that the investigation was closed; and that said Investigator has advised the Commission that the Parties remain at impasse. The Commission, on August 21, 1984, ordered the Parties to select a Mediator/Arbitrator.

The undersigned was selected as Mediator/Arbitrator and was appointed by the Commission on September 12, 1984. On January 16, 1985, the Parties met with the Mediator/Arbitrator for the purpose of mediation and if necessary-arbitration. Several issues were resolved, however, two issues remained at impasse. The Parties waived their respective rights to written notice of the Arbitrator's intent to proceed to arbitration and waived their right to withdraw their final offers as extended by Section 111.70(4)(cm)6C. Wis. Stats. A hearing was then conducted at which the Parties presented evidence in support of their positions. The Parties agreed to present arguments in the form of written briefs due February 27, 1985. Based on a review of the evidence and the arguments and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats., the Mediator/Arbitrator renders the following award.

### III. Final Offers and Issues

During mediation on January 16, 1985, the Parties resolved several issues which were contained in their original final offers. These items were: compensation for extra duties, elementary preparation time and voluntary early retirement. The Parties further agreed to revise their final offers to the extent of including the resolved issues, as noted above, as stipulated items of agreement.

The remaining issues related to work load for secondary teachers and Association leave.

With respect to the work load issue, the District is proposing that Article X, Section B read as follows:

"Secondary teachers (grades 7-12) who are assigned no more than five (5) teaching periods and one (1) supervisory period (i.e., study hall, laboratory or other supervision) per work day shall be compensated in accordance with the provisions of the Salary Schedule, unless otherwise provided in this Agreement.

"In the event a secondary teacher is involuntarily assigned a sixth teaching period of class, said teacher shall be compensated an additional one-seventh of his/her per diem pay for the duration of the assignment."

The Association's offer on Article X, Section B, is as follows:

"Secondary school teachers (grades 7-12) who are assigned to more than five (5) periods of classroom instruction or student supervision (e.g. study hall, lavatory, or other supervision) per workday, averaged on a semester basis, shall be compensated in accordance with the provisions of the salary schedule, unless otherwise provided in this agreement.

"The District may assign work to secondary school teachers in addition to basic assigned workload described above in subsection c. Teachers whose workloads exceed those compensated by the salary schedule, as provided above in subsection c., shall be compensated, in addition to their scheduled salaries, as follows: a teacher to whom the District chooses to assign more than five (5) periods of classroom instruction and student supervision per workday averaged on a semester basis shall receive additional compensation at the teacher's regular hourly rate of pay for each additional period of assigned classroom instruction or student supervision in excess of five (5) per work day. Said hourly rate shall be figured by current salary/192."

It is also pertinent to note that Article X, Section B, in 1983-84 and 1984-85 contract, reads as follows:

"Lincoln, Aldrich, and Memorial (Grades 7-12): Noon period assignments shall be considered one part of the normal five (5) assignment teacher load."

This language is in reference to an essentially undisputed practice at the secondary level of a work load which consists of a total of seven periods, to which a teacher may be assigned five student contact periods. In addition, it has been the practice to provide additional compensation to any teacher assigned an additional period of classroom instruction or student supervision in excess of five periods per day. Thus, the Association's proposal essentially codifies the practice that had evolved concerning and pursuant to Article X, Section B.

Therefore, the difference in the offers is that the District proposes to retain a seven period day, but proposes to increase the present workload configuration of five contact periods and two preparation periods to a five teaching period, one supervisory period and one preparation period work load configuration.

The Association, on the other hand, proposes essentially the status quo which limits a teacher's workload to five assignments (teaching and/or supervisory) and two preparation periods. If a sixth teaching period was assigned it would be in lieu of a supervisory period. Both offers propose additional compensation in the event a teacher is given an assignment over the normal load as connotated in their respective offer.

With respect to Association leave, the Association proposed the following addition to the contract:

"Association days---The Association, upon request, shall have ten (10) days with pay during each school year covered by this contract for the transaction of Association activities directly related to the Association's responsibilities and functions as the exclusive collective bargaining representative. The Association shall reimburse the District for the cost of substitute teacher(s) within ninety (90) days. Forty-eight hours advance notification shall be given whenever possible to the Superintendent or his/her designee.

"The Association president or his/her designee shall be allowed to attend to Association business during non-pupil contact time. Building Representatives of the Association shall be permitted to transact necessary Association business during non-pupil contact time."

The District makes no proposal on Association days, and therefore, proposes retention of the status quo. The current contract is silent on the issue, and the District proposes that it remain that way.

There is also an ancillary dispute with respect to which districts are comparable to Beloit.

#### IV. Position of the Parties

##### A. COMPARABLE DISTRICTS

##### 1. The District

The District proposes that the appropriate set of comparable school districts consist of districts in the former CESA 17 group and a number of similar sized school districts on a statewide basis. These are:

| <u>CESA 17</u>    | <u>Statewide</u>     |
|-------------------|----------------------|
| 1. Albany         | 1. Elmbrook          |
| 2. Beloit-Turner  | 2. Fond du Lac       |
| 3. Brodhead       | 3. LaCrosse          |
| 4. Clinton        | 4. Neenah            |
| 5. Edgerton       | 5. Oshkosh           |
| 6. Evansville     | 6. Stevens Point     |
| 7. Fort Atkinson  | 7. Wausau            |
| 8. Janesville     | 8. Wauwatosa         |
| 9. Jefferson      | 9. West Allis        |
| 10. Johnson Creek | 10. West Bend        |
| 11. Lake Mills    | 11. Wisconsin Rapids |
| 12. Milton        |                      |
| 13. Parkview      |                      |

The Board believes these districts are comparable based on the fact that they are geographically proximate and/or similar in size. They believe these to be the two most important criteria of comparability. The CESA 17 group generally is geographically proximate and the statewide schools are similar in size.

With respect to the former CESA 17 schools, they believe they are comparable in spite of the differences in size based on geography. In this respect, they direct attention to an arbitration award which they suggest supports their position on the comparables. In that case, the Arbitrator believed for a non-economic issue such as work load, that contiguous districts, in spite of size, were comparable. With respect to size, Beloit has a pupil population of 6,531, and the population of the statewide schools ranges between 5,000 and 8,000. Thus, they believe a combination of these two groups of districts provides a well-balanced set of comparables which meets the criteria established for comparability by Wisconsin Arbitrators.

The Board also contends that their selection of comparable schools is appropriate because the Arbitrator in a previous case between the Parties utilized this group. In that case, Arbitrator Sharon Imes chose to use "the CESA 17 districts, the 11 statewide districts proposed by the employer, and Sun Prairie as the appropriate set of comparables." School District of Beloit, WERC Dec. No. 19168 (11/81). Since that date, the Board has continued to utilize the CESA 17 districts and the eleven statewide districts in negotiations and mediation proceedings in order to promote consistency and more effective bargaining. In this connection, they note Wisconsin Arbitrators have articulated a marked reluctance to change comparable districts that Parties have historically used, or which have been determined to be comparable in a prior proceeding. They cite several cases in support of this point.

In a similar vein, the Board argues against the Association's comparable pool. They note that the Association has included all of the districts in the Big Eight Athletic Conference as a pool of comparables, even after Arbitrator Imes specifically stated in the past mediation/arbitration decision that Madison is not comparable because of its size and location in a major metropolitan area.

## 2. The Association

The Association, like the District, puts forth two groups of comparables. They are the schools in the Big Eight Athletic Conference and eleven statewide schools with similar student and teacher populations. The Athletic Conference, in addition to Beloit, consists of four high schools in Madison, two in Janesville, and Sun Prairie. The schools they believe on a statewide basis to be comparable are:

|               |                  |
|---------------|------------------|
| Elmbrook      | Wausau           |
| Fond du Lac   | Wauwatosa        |
| LaCrosse      | West Allis       |
| Neenah        | West Bend        |
| Stevens Point | Wisconsin Rapids |

The Association proposed the use of the Big Eight Athletic Conference in recognition that athletic conferences generally stabilize athletic competitiveness by assembling high schools of comparable student size, geographic size and general resource levels; and because neutrals have customarily assigned significance to such groupings. Therefore, added to the consideration the criteria of geographic proximity and the "industry practice", the athletic conferences have become a highly appropriate source for comparability. With respect to their use of

statewide comparables, the Association believes this is supported by: (1) the fact that the Board presented essentially the same group, save Oshkosh; and (2) the previous arbitration by Arbitrator Imes.

The Association rejects, however, the Board's argument that the continued use of the CESA 17 schools is valid. Admittedly, the Association and the Board conjointly urged the consideration of the CESA 17 grouping to Arbitrator Imes in the previous arbitration, and that conjoint presentation inescapably led the Arbitrator to her acceptance of their inclusion for acceptability as 'comparable schools.' However, the Association now argues that the inclusion of the CESA 17 schools is no longer appropriate, for as of July 1, 1984, CESA 17, as was known then, no longer exists. A complete reorganization of the CESA system in Wisconsin now places Beloit in a CESA grouping called CESA 2, which incorporates over 70 school districts in southeast Wisconsin. The very size of that new CESA group causes the Association's rejection of its use to this Arbitrator; hence, the CESA system, either in its original or new form, has ceased to exist as a bona fide, effective comparability base for the Beloit Schools.

## B. SECONDARY WORK LOAD

### 1. The District

The District, generally speaking, takes the position that their offer, with respect to work load, is the more reasonable when viewed in light of the interests and welfare of the public and the comparative data.

With specific respect to the comparative data, the Board reviewed the collective bargaining agreements of comparable school districts concerning teacher work load provisions. However, since these practices are not uniformly contained in collective bargaining agreements, the Board also submitted a work load survey to the superintendents or directors of instruction in each of the comparable districts in order to verify the district's actual work load assignments and compensation for extra assignments. Based on this data the District makes a number of arguments.

First, they contend that the number of regular daily assignments supports the Board's offer. Concerning middle schools in the former CESA 17 group, they note that only Janesville has a regular daily assignment as limited as the BEA offer. The remaining eleven districts support the Board's offer. For instance, only Albany provides for a limit of five teaching assignments and one supervisory assignment as in the Board's offer. The other ten districts allow for at least six teaching assignments if necessary. Four of these districts allow for even more than six teaching assignments with no extra compensation paid to the teachers. Concerning high schools in the CESA group, they draw attention to the fact that only Janesville supports the Association. Two schools have five teaching and one supervision assignments (the same as the Board's offer). Eight schools have six teaching and/or supervision assignments and two have a six and one-half combination of teaching and supervision assignments respectively. Thus, there is only one district which supports the BEA offer. The remaining 12 districts either match or allow for more assignments than the Board's offer.

Regarding the statewide comparables in middle schools, the District notes, more specifically, one school has a load of five teaching and one supervision for one semester; five schools have a load of five teaching and one supervision; two schools have a load of six teaching and/or supervision; and two schools have strictly six teaching assignments.

Regarding work loads in high schools in the statewide group, they assert that the data indicates that among the statewide districts, only two have high school work loads which limit teachers to five teaching and/or supervisory assignments. Six of the remaining districts provide for one-half period less than does the Board's offer. But, it is significant to note, that of the six districts with a limit of five and one-half assignments, four clearly support the Board's offer, in that they require five of the assignments to be teaching assignments and not a combination of teaching and supervision. The remaining four districts are identical to the Board's offer. These districts provide for five teaching and one supervisory assignment. They also argue that Sun Prairie supports their offer, in that the regular assignment for middle school teachers consists of "a minimum of five classroom assignments and one-and-a-half additional or extra assignments per day per year." For the high school teachers at Sun Prairie, the regular assignments total six periods per day as follows: five instruction class periods per day per year and one or additional period assignment per one-half year; or four instructional class periods per day per year and two extra or additional periods per day per year.

In summary on their argument concerning the number of assignments, they maintain that it is undeniable that of the 24 comparable districts, at both the middle school and high school levels, only three districts have work load assignments similar to the BEA final offer. The assignments in the remaining 21 districts all meet or exceed the Board's final offer.

The second argument made by the District, is that the amount of daily contact time supports the Board's final offer. Presently, they note that under the BEA's offer, all of the 24 comparable school districts demand more pupil-teacher contact time at both the middle school and high school levels than does Beloit. The results under each offer are summarized below:

|                                 | <u>"Total Daily Contact Time</u> |                  |
|---------------------------------|----------------------------------|------------------|
|                                 | <u>Board Offer</u>               | <u>BEA Offer</u> |
| <u>CESA 17 Middle Schools</u>   |                                  |                  |
| Average: 293 Minutes            | 282 Minutes                      | 235 Minutes      |
|                                 | 11 Minutes Less                  | 58 Minutes Less  |
| <u>CESA 17 High Schools</u>     |                                  |                  |
| Average: 292 Minutes            | 300 Minutes                      | 250 Minutes      |
|                                 | 8 Minutes More                   | 42 Minutes Less  |
| <u>Statewide Middle Schools</u> |                                  |                  |
| Average: 269 Minutes            | 282 Minutes                      | 235 Minutes      |
|                                 | 13 Minutes More                  | 34 Minutes Less  |
| <u>Statewide High Schools</u>   |                                  |                  |
| Average: 285 Minutes            | 300 Minutes                      | 250 Minutes      |
|                                 | 15 Minutes More                  | 35 Minutes Less" |

Based on this data, they contend that the Board's final offer would place the daily contact time for Beloit within 15 minutes of the average contact time among the comparables at both the middle school and high school levels. The BEA's offer would maintain the low standing of Beloit's contact time, as compared with the comparable districts. The BEA's offer places the daily contact time for Beloit anywhere from 34 to 58 minutes below the average daily contact time in the comparable districts. Thus, in their opinion, it is clear that the Board's offer is equitable and within the scope of teaching contact time in the comparable districts and can only improve education in Beloit and promote the interest and welfare of the public.

They also argue that their offer for extra pay also compares more favorably. They note that the BEA's offer provides that a teacher will receive extra compensation over and above the salary schedule for any type of assignment (teaching or supervisory) that is above five assignments per day. In other words, a teacher will receive extra pay for a sixth teaching or supervisory assignment. On the other hand, the Board's offer provides that if a teacher is assigned a sixth teaching assignment (instead of the regular assignment of five teaching and one supervisory periods under the Board's offer), the teacher will receive compensation beyond that provided in the salary schedule. Their offer is more consistent based on a detailed analysis of extra pay provisions in the comparable. They do summarize this data, contending that it indicates that while two of the 24 districts (Fond du Lac and Oshkosh) do not assign six teaching periods and, therefore, have no provision for them; 12 of the comparables do not provide any extra pay for a sixth teaching assignment when there is no supervisory period assigned, and one district (Lake Mills) does not provide any extra pay for a sixth teaching assignment even when there is a supervisory period assigned. In short, even six teaching periods are considered to be part of the normal workload in these 13 districts. The Board's offer compares very favorably with these 13 districts since the Board is offering to provide extra pay for a sixth teaching assignment when there is no supervisory assignment. Moreover, six of the comparables have provisions similar to that of the Board's in that they provide extra pay for a sixth teaching assignment when there is no supervisory assignment (one of these districts requires one-half period of supervision as well). The remaining three districts (Janesville, Elmbrook and Wisconsin Rapids) are the only districts that compare with the BEA's offer in that they provide extra compensation for a sixth assignment regardless of whether or not it is teaching or supervisory.

The District also questions the adequacy of the Association's data. For several reasons, they believe it to be overly selective and incomplete. Among these reasons, are that no middle school data is given, the schools used are not comparable, no contact or preparation time figures are given, and that mere reference to the contract language is inadequate because of the various practices.

The next major argument relates to internal comparability. They assert that their proposal is more reasonable because it affords junior and senior high school teachers a teaching schedule which is comparable to those for elementary teachers in Beloit. The range of contact time for elementary teachers is 1,462 minutes (kindergarten) to 1,472 minutes (grades 4-6) to 1,492 minutes (grades 7-12). This compares the Association's offer, which results in 1,175 minutes of contact time and 1,250 minutes of contact time in the middle school and high school respectively. Under the Board's offer, the middle school teachers will have 1,410 minutes of contact time and the high school will have 1,500 minutes of contact time. Accordingly, they maintain that the Board's offer would bring all of the teachers in the school district within an equitable range of pupil contact time. To rule in favor of the BEA's offer would result in a situation where secondary teachers would be in a position to receive premium pay for working even fewer hours than their co-employees at the elementary level.

Next, the District argues that they have presented clear and compelling proof of the need to implement sixth period assignments. First, in this respect, they submit such a compelling need has already been shown based on the overwhelming support of the Board's final offer amongst the comparable districts. In addition, the Board is firmly convinced that the assignment of supervision, study halls, or laboratories as a sixth assignment are necessary on a selective basis, not only

to maintain the discipline conducive to a good educational atmosphere, but also to accommodate and enhance the educational needs of students in the Beloit school district. More specifically, they argue in detail, that the current workload hampers efficiency and that there is a compelling need for laboratories. With respect to laboratories, they suggest that supervision by the teacher in a laboratory setting would improve the quality and quantity of education by allowing the student to do independent study in an area of interest, while also having the opportunity to ask questions of the teacher if the need would arise. They also believe that there is a compelling need for study hall supervision and a compelling need for other types of supervision.

The reasonableness of their offer is also supported by the fact that their proposal is sufficiently specific in defining how the additional assignment process will work. In his decision concerning another workload arbitration involving the Antigo School District, WERC Dec. No. 1659-A (3/79), Arbitrator Frank Zeidler stressed the importance of the specificity of the contract language with regard to the reasonable limits placed on the language and how the language would work. In the instant case, the language involving an additional assignment is limited to supervision, study halls, and laboratories. It specifies additional compensation for a sixth teaching assignment. Such specificity and reasonable limits in the language of the collective bargaining agreement leaves no room for abuse and will no doubt be in the best interest of all parties involved.

In rebuttal to the Association's arguments, the District makes a number of points. First, there will be no loss in wages as claimed by the Association. Second, the decrease in preparation time results in a figure very consistent with the comparables. They submit the following:

"Daily Unschedule Time

|   | <u>Board</u>                   | <u>BEA</u>                     |
|---|--------------------------------|--------------------------------|
| <u>CESA 17 Middle Schools</u><br>Average: 152 Minutes   | 168 Minutes<br>16 Minutes More | 215 Minutes<br>63 Minutes More |
| <u>CESA 17 High Schools</u><br>Average: 151 Minutes     | 150 Minutes<br>1 Minutes Less  | 200 Minutes<br>49 Minutes More |
| <u>Statewide Middle Schools</u><br>Average: 161 Minutes | 168 Minutes<br>7 Minutes More  | 215 Minutes<br>54 Minutes More |
| <u>Statewide High Schools</u><br>Average: 152 Minutes   | 150 Minutes<br>2 Minutes Less  | 200 Minutes<br>48 Minutes More |

Third, they contend that there is ample evidence to change the past practice.

2. The Association

The Association first contends that information contained in their exhibits concerning workloads in Wauwatosa, West Allis and Neenah, is more accurate than the information provided by the Board. They present a detailed summary of this information. Based on this, they suggest that its Exhibits are more reliable.

The Association next points out, that while the present Article X, Section B is simple, it carries with it significant history and practice. They believe the practice of 16 years standing can be simply stated, and it is: there are seven teaching periods to a secondary day. Teachers, by contract, may be assigned to work five of the seven periods. "An assignment" may be all teaching assignments or a combination of teaching and supervision, e.g. study hall, assignments. Should the District need a teacher to work an extra period or "assignment", the District may so assign, but the teacher is compensated at the rate of one-seventh of his/her teaching salary. This practice is the status quo, and it was because the District's proposal represented a drastic departure from the status quo practice in the district, the Association developed accompanying language that depicted the "normal five assignment teacher load" practice and the practice of compensation for any additional period of assigned classroom instruction or student supervision in excess of the five per work day.

The Association contends that the impact of the Board's drastic proposal must be considered. The first impact can, in their opinion, be expressed in terms of lost earnings. For instance, an extra assignment given to a teacher during the 1984-85 school year, now results in an average payment of \$3,429.57 (based on an average salary of \$24,007). The Board's right to assign without compensation, therefore, would produce a loss of that amount, \$3,429.57, to those teachers given a supervisory period or a total net loss of \$699,632.28 in wages for all 204 secondary teachers.

The Association also believes that more important than the monetary impact, is the loss of valuable preparation time to each teacher. They submit exhibits that they suggest dramatically illustrates what will happen if a teacher's assignments are increased from five to six. Preparation time will decrease by 50 percent, while duties will increase by 20 percent. Reducing the preparation time would clearly limit the extra time a teacher would be available to give additional individual assistance to his/her students. They also cite nationally known studies, which each speak specifically to the subject of the allocation of time for instruction and preparation of classes. These studies confirm that the Association's position is sound and educationally desirable. All of the studies recommend a limited number of teaching assignments and elimination of supervisory and clerical responsibilities. Neither concept would be forwarded if the Board's position is chosen.

There are also a variety of miscellaneous concerns raised by the Association. These are: (a) a single teacher could potentially be responsible for 30 students x 5 classes, plus 100 students in a study hall, for a total potential responsibility of 250 students; (b) there would be a physical and emotional draining of a teacher facing a potential six periods in a row, with only a lunch break to relieve the teacher; and (c) there are no guarantees in the Board's proposal that the assignment of a supervisory period will not result in a surplus of teachers, thus necessitating layoffs and increased class sizes, or that the "extra assignment" will be distributed equitably and equally among employees.

The next major argument advanced by the Association, is to assert that the Board has not met the burden of proof necessary for changing the contract, and no attempt of a "buy out" or adequate quid pro quo has been made. They make reference to several arbitration decisions which establish that the burden is on the Parties proposing to change the agreement to show a compelling need for such a change.

They do not believe such a need has been established. They acknowledge Assistant Superintendent Decker's testimony that there would be flexibility in scheduling and providing other "educationally productive" options. However, they maintain that there is no evidence in the record that there is, in fact, a lack of flexibility under the present contract or that the District, in fact, has been hampered in providing educational opportunities adequate to and for student needs. Additionally, they note that the District did try to assert through Exhibits 16 and 17, that because Beloit has a shorter school day, education was somewhat "lacking". However, they believe a closer examination of those two exhibits will show that according to Assistant Superintendent Bill Decker, there has been no movement in Beloit to lengthen the school day. Last, they note the District's argument that the Board's proposal is to reduce the discrepancy that exists between the amount of student contact time of an elementary teacher, and the amount of student contact time of a secondary teacher. The Association responds on the other hand, the discrepancy could be resolved in the opposite way. They assert that elementary teachers need additional preparation time for the value that it will bring to their students and the educational process, not merely to reduce the discrepancy between them and their secondary counterparts; furthermore, if the difference in time was a major issue, the stipulation on elementary preparation time reached during the mediation session prior to the arbitration hearing went a long way in reducing the discrepancy.

The Association also argues that, not only has the District not demonstrated a need, but they have not included in its offer anything which would serve as a quid pro quo for the change that it seeks to make in the contract. Moreover, the District sought to make this drastic change during a limited reopener on a two-year agreement. In this respect, they cite Arbitrator Richard U. Miller, in Clintonville Public School District, Dec. No. 19768-A (4/83).

With respect to comparables, the Association believes their final offer on secondary work load is representative of the industry practice. However, they also state that because the Association's proposal represents the status quo with a long historical background and because the District has shown no "persuasive reason" for changing the status quo, the use of comparables deserves less weight than might be otherwise justified. They then proceed to analyze the work load in the Big Eight Conference, and conclude that contract language and/or practices in schools in the athletic conference have strong similarities to the five assignment practice in Beloit. With respect to the statewide schools of a similar size, they conclude that two schools (Elmbrook and West Allis) are very nearly like Beloit's, in that five academic teaching periods per day are the norm without substantial payment going to the teacher who is assigned more than the norm. The other schools are less similar than the Beloit language and practice with respect to the five class assignment, but it must be noted that Stevens Point, LaCrosse, Neenah and West Bend do provide preparation time or non-student contact time very close in amounts to Beloit's 100 minutes daily. Beyond this, they emphasize that the Board has proposed a drastic change in this matter and now tries to justify this change by charging the Arbitrator to look at the comparables and asking him to make such a drastic change based on comparabilities, not need for change. They must surely fail in this attempt, for the Arbitrator has no other choice after studying the data but to conclude that the concept proposed by the Association does exist in abundance in the schools presented to him.

## C. ASSOCIATION DAYS

### 1. The Association

The Association believes this proposal is supportable because, as the record shows, the proposal made by the Association is clearly within the past practice as established by the District. The Association's proposal then, by the District's own admission, would put into contract language what has become a fairly lengthy practice of the District. In fact, the Association's proposal would clarify some ambiguous areas in that practice and would put some limitations to Association leave days that do not now exist.

They also counter several concerns raised by the District: (1) there will be no need for an increased number of substitute teachers. In fact, the Association's proposal would limit the number of substitute teachers to a full-time equivalency number of ten; (2) with respect to cost, the Association's proposal to reimburse the District for the cost of the substitute teachers would be cheaper or have less financial impact for the District than the District's practice of receiving no reimbursement from the Association and consequently, picking up the entire tab for Association representatives to attend hearings, etc.; (3) the impact on loss of instruction time will be minimal compared to normal absenteeism. For instance, Mr. Decker testified that approximately 25 teachers (of the total District professional staff of 500.05, AX 25) were absent on any given day so that the impact of the infusion of ten Association days into the overall picture must be characterized as miniscule; and (4) the 90-day gap for reimbursement will not create a hardship for the District.

The Association also contends that their proposal is supported by the comparables. With respect to the athletic conference, they avers that Janesville and Madison each have the same or better number of days available for Association use. In Sun Prairie, each Association leader may use five of his/her reimbursable personal leave days for Association, thereby creating a potential use of days for Association business in excess of the ten days proposed by this Association. With respect to similarly sized schools, they note Fond du Lac, LaCrosse and Wauwatosa do have provisions that are the same or similar to the Association's position. Moreover, one of the schools, Stevens Point, allows a release of Association leaders under conditions similar to the practices now in effect in Beloit.

### 2. The District

As background, the Board points out that the current practice in the District is to allow the BEA president to utilize two periods per week of the last period of the day to conduct BEA business (Joint Exhibit 1 at 22). Additionally, the District has historically allowed BEA members to be present upon request at BEA related activities such as arbitrations, and the Board has provided and paid for substitutes.

Against this background, the District argues that the comparative data does not support the Association's proposal for ten Association days. Based on their analysis of the comparables, they conclude of the 24 comparable school districts, 19 do not provide the Association with ten Association days to conduct Union business. The remaining five do have such provisions, and in three of these districts the Association is required to reimburse the District for the cost of substitutes. However, it is significant to note, that in these three districts, the Association is not given 90-days within which to reimburse the District. This is significant, since the Beloit School District presently pays its substitute teachers within 14 days.

They next argue, that the Association has not met the burden of demonstrating a need for changes in the status quo.

## V. DISCUSSION

### A. COMPARABLE DISTRICTS

First, it is noted that both Parties agree on the use of a group of similarly sized schools on a statewide basis. Thus, there is no dispute on the comparability of these schools. The real issue here is the comparability of the former CESA 17 Districts versus the Big Eight Athletic Conference.

The Arbitrator finds that the group of schools proposed by the District is more appropriate. This conclusion is reached for several reasons. The primary reason is that Arbitrator Imes, in a previous case, determined that the CESA 17 school's, in combination with the statewide group, were appropriate. In this case, only involving language, she so held because both Parties agreed that the CESA 17 schools, and the statewide group were comparable and because this provided a "substantially large enough group of districts to establish the general relationship which exists between employers and employees relevant to the issues in dispute" (School District of Beloit, Dec. No. 28012 MED/ARB-1167 (1981)).

There is no reason now, based on this record, to alter Arbitrator Imes findings. Moreover, there is good reason not to. For instance, stability in the bargaining process will occur if the Parties, as well as Arbitrators, absent good reason not to, stick with one set of comparables once it is established through arbitration or voluntary agreement. Successful bargaining is more likely if the Parties come to the bargaining table with the same yardstick, instead of wholly divergent views about what is supportable based on wholly divergent views on comparable schools.

The Association does argue that the former CESA 17 schools are not comparable, because CESA 17 no longer exist. The Arbitrator disagrees that this is significant to any material degree. It simply is not relevant that an administrative decision regrouped these schools. While the CESA group may have changed, the school districts have not, at least so far as can be determined from this record. They are, in terms of comparability factors, still the same as they were in 1981, when even the Association agrees they were comparable.

In view of the foregoing, the schools for comparability purposes will be those districts proposed by the Board.

### B. ASSOCIATION DAYS

It is the opinion of the Arbitrator, after reviewing and assessing the impact of the Association's proposal for Association days, that a detailed analysis is not necessary. The impact is somewhat limited in scope, relative to the present practice in the District and relative to the work load dispute. Therefore, even if the Association were to prevail on the work load issue, any negative preference on this portion of their proposal would not, in the judgement of the Arbitrator, be enough to sink the entire proposal. Conversely, if the Board were to prevail on the work load issue, any positive preference for the Association proposal on Association days would not deserve as much weight. Clearly the determinative issue in this case is the work load question.

### C. WORK LOAD

It is well established that the party proposing a substantial change in contractual language faces a substantial burden. Indicative of these thoughts are the comments of Arbitrator Krinsky in School District of Barron, Dec. No. 16276-A (11/78), wherein he held:

"In the arbitrator's view the District's offer represents a substantial restructuring of the salary schedule because of its redistribution of salary money. Without a very persuasive argument as to why experienced teachers should be treated less favorably than inexperienced teachers, an argument that does not come through in the District's presentation, the arbitrator believes that such a restructuring of the parties' relationship should result from voluntary collective bargaining and should not be imposed by an arbitrator. In the arbitrator's view one of the other factors that an arbitrator normally takes into account in the determination of wages is the affect of his award on the parties' collective bargaining relationship. Arbitrators generally view the voluntary bargaining process, not arbitration, as the means by which fundamental changes in relationships should be achieved, so that arbitration will not become a substitute for bargaining. (Emphasis added)."

Indeed, Arbitrators should be reluctant to institute changes that there is little reason to believe would be made voluntarily in the context of free collective bargaining. The mediation/arbitration process is, after all, a substitute impasse procedure that avoids, in the public interest, the impact of the Parties counterveiling economic powers, and should not be viewed or used to expand the rights of either Party beyond what they might be absent compulsory arbitration. It is also apparent, certainly, that the greater the impact of a proposed change, the more persuasive the case must be in order to set aside the status quo.

To be convinced that a change is justified, Arbitrators look to a variety of factors or combination of factors. Among these are: (1) support in the comparables, and (2) a demonstrated need for the change. Great emphasis has been put upon the comparables in assessing whether changes are justified. This is because, if there is evidence that other comparable parties have, on a comprehensive basis, voluntarily accepted identical or similar propositions, it is highly indicative not only of the reasonableness of the proposal, per se, but it is also indicative of a reasonable expectation that the Parties in the context of free collective bargaining would have voluntarily agreed to such a proposition. More simply put, support in the comparables satisfies the neutral's concern that the process is being used as a legitimate substitute for a non-restricted impasse procedure.

A review of the evidence shows that there is widespread support in the comparables for the Employer's proposal. The Employer's brief details this support, but it is noteworthy to emphasize that there are only three school districts of the combined CESA 17 and statewide schools (a total of 24), which squarely support, either at the middle school or high school level, the Association's proposal to rely on the status quo. Janesville and Elmbrook are the only school districts which have a five assignment teaching load at both the high school and middle school levels. Wisconsin Rapids has five assignments at the high school level only. Other than this limited number of schools, all other school districts at the middle school or high school level have teaching loads substantially equal to or greater than the Board's proposal. It also is

noteworthy, that in terms of preparation time and student contact time, the Board's offer will result in a work load more consistent with the comparables than would the Association's offer. Thus, there is the necessary support in the comparables to justify the proposal to change the status quo.

In terms of need, the District and the Association make conflicting arguments about the educational value of increased contact time versus decreased preparation time. It is not necessary for the Arbitrator to make broad declarations about the need for good or better educational practices. For the purposes of this arbitration, it is sufficient to say that the need for such a practice is sufficiently evidenced by the fact that the vast majority of comparable parties have accepted such an arrangement. This in and of itself, is indicative that the greater share of collective wisdom favors the District's proposal from the standpoint of educational need.

While the District's proposal is favored and supportable in several important respects, it also raises some concerns. Most noteworthy, is their emphasis on laboratories as a type of supervision and the equitable distribution of supervisory assignments. It is obvious that there could potentially be problems with equitable distribution. With respect to the laboratories, the concern is that the laboratories can be a very active form of supervision which, depending on the circumstances, can border on full-fledged teaching, distinguished only by its individualistic nature.

On the other hand, there is no evidence that the administrative problems that may be associated with the District's proposed work load arrangement are any different or greater than those that might be experienced in other districts. Thus, ultimately, the concerns surrounding the District's proposal are outweighed by the support it finds in the comparables. However, the District should be cautious in its administration, or it may find itself subject to proposals to limit its discretion or to adjust compensation for inequities.

To summarize, the District's final offer is preferred because on the major issue, it has broad support in the comparables. This compels adoption of their proposal. Just as arbitrators favor wage proposals which tend toward uniformity in salaries among comparable employers, final offers, all other things considered equal, which tend toward uniformity in hours and basic working conditions should be equally preferred.

## VI. AWARD

The final offer of the Board of Education and the stipulation of the Parties will be included as part of the 1983-84/1984-85 Collective Bargaining Agreement.